

Decision 05-05-018

May 5, 2005

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of SOUTHERN CALIFORNIA
GAS COMPANY for authority to update its gas
revenue requirement and base rates. (U 904 G)

Application 02-12-027
(Filed December 20, 2002)

Application of SAN DIEGO GAS & ELECTRIC
COMPANY for authority to update its gas and
electric revenue requirement and base rates.
(U 902-M)

Application 02-12-028
(Filed December 20, 2002)

Investigation on the Commission's Own Motion
into the Rates, Operations, Practices, Service and
Facilities of Southern California Gas Company
and San Diego Gas & Electric Company.

Investigation 03-03-016
(Filed March 13, 2003)

**ORDER GRANTING LIMITED REHEARING OF DECISION
(D.) 04-12-015, REGARDING THE CALCULATION OF SDG&E'S SHARE
OF SONGS COSTS, AND DENYING REHEARING
OF THE DECISION IN ALL OTHER RESPECTS**

I. SUMMARY

In Decision (D.) 04-12-015, the Commission adopted, with two modifications, a multi-party Settlement Agreement ("Settlement")¹ resolving contested issues in Application for Test Year 2004 Cost of Service, A.02-12-028, filed by San Diego Gas & Electric Company ("SDG&E").² (D. 04-12-015, p.3.) SDG&E challenges the Commission's determinations with regard to SDG&E's share of San Onofre Nuclear Generating Station ("SONGS") costs.

¹ The Settlement can be found as Appendix H in D.04-12-015.

² This was a consolidated proceeding that included the Application for Test Year 2004 Cost of Service, A.02-12-027, filed by Southern California Gas Company ("SoCalGas"). There was a separate all-party settlement resolving issues in the SoCalGas' application. (D.04-12-015, p. 2.)

The Commission has a long-standing practice of addressing SONGS-related expenses that SCE bills to SDG&E in the Southern California Edison Company's General Rate Case ("SCE GRC"). (D.04-07-022, p. 60.) The Settlement in the instant proceeding includes placeholder numbers and defers to the SCE GRC for determination of actual SONGS costs. (Settlement, p. 6.) Regarding SDG&E's SONGS costs the Settlement states:

"Most of SDG&E's 2004 revenue requirement with respect to its 20% ownership in the San Onofre Nuclear Generating Station ... is being litigated in Phase 1 of Southern California Edison Company's ... General Rate Case ... (A.02-05-004), which still is pending. The Joint Parties agree that SDG&E's level of electric production expense adopted in the final revenue requirement in this proceeding should reflect SDG&E's share of the actual SONGS costs the Commission authorizes in its decision in Phase 1 of the SCE GRC." (Settlement, p. 6, emphasis added.)

The Joint Parties also agreed to serve a late-filed exhibit after the conclusion of the SCE GRC "showing SDG&E's share of the SONGS costs the Commission authorizes in A.02-05-004." (Settlement, p. 6.) The Commission issued D.04-07-022 in Phase I of the SCE GRC on July 16, 2004. On September 3, 2004, SDG&E provided a "Follow-up Exhibit," marked as late-filed Exhibit No. 169 in the instant proceeding. SDG&E requested that its late exhibit be received into evidence. The exhibit was noted in D.04-12-015, but not formally received. The application for rehearing repeats the request for admission.

D.04-12-015 relies on the language of D.04-07-022 and on the Results of Operation ("RO") computer model from the SCE GRC proceeding. (D.04-12-015, p.21.) The RO from the SCE GRC is not identified or admitted in the record of this SDG&E proceeding, but it is Exhibit 409 in the SCE proceeding.

SDG&E timely filed an application for rehearing. SDG&E alleges in its rehearing application that the Commission's calculation understates the correct SDG&E share of SONGS Operating and Maintenance ("O&M") costs by \$9.485 million.

(Application for Rehearing, p. 1.) There is no disagreement that the determination of SDG&E's share should be based on and consistent with the outcome of the SCE proceeding. However, SDG&E claims that the Commission's reliance on the SCE RO model constitutes legal error for several reasons as discussed below.

Specifically, SDG&E alleges the following: (1) D.04-12-015, relying on numbers from the SCE RO model, represents a different methodology from one adopted in D.04-07-022 for calculating SDG&E's share of SONGS O&M, without notice and opportunity to be heard in violation of Public Utilities Code section 1708; (2) the use of numbers from the SCE RO model is not supported by findings of fact; (3) the use of numbers from the RO model is not supported by the evidence in the record.

We have reviewed each and every allegation in the rehearing application. We find that Public Utilities Code section 1708 does not apply to D.04-12-015. However, we will grant limited rehearing regarding the calculation of SDG&E's share of SONGS costs in order to ensure that it is consistent with D.04-07-022 and that there is a sufficient record for our decision. Because we are granting limited rehearing on the disputed SONGS calculation, we will not rule on the sufficiency of the findings of fact related to that issue.

II. DISCUSSION

1. Public Utilities Code Section 1708

SDG&E alleges that the Commission violated Public Utilities Code section³ 1708, which provides:

“The [C]ommission may at any time, upon notice to the parties, and with opportunity to be heard as provided in the case of complaints, rescind, alter, or amend any order or decision made by it.” (Pub. Util. Code, §1708.)

³ Unless otherwise noted, all section references are to the Public Utilities Code.

SDG&E argues that in D.04-12-015 the Commission modified D.04-07-022, but did not provide adequate notice and opportunity to rebut the approach adopted. (Application for Rehearing, pp. 14–15.)⁴ These section 1708 allegations are without merit because D.04-12-015 does not rescind, alter or amend D.04-07-022.

D.04-07-022 finds SDG&E’s request for its share of SONGS costs (referred to as its “framework”) to be “reasonable and consistent with prior decisions.” (*SCE GRC Decision* [D.04-07-022], *supra*, at p. 60 (slip op.)) D.04-07-022 approves SDG&E’s cost proposals, subject to adjustments.

“San Diego Gas & Electric Company’s proposals for cost recovery for its share of SONGS capital costs and O&M expenses are approved, subject to adjustments necessary to reflect the corresponding costs and expenses adopted for SCE.” (*Id.* at p. 348 [Ordering Paragraph No. 17] (slip op.), emphasis added.)

In D.04-12-015 the Commission does not modify its earlier determination that SDG&E’s framework was reasonable and consistent with prior decisions. Rather, D.04-12-015 cites the earlier decision, relies on it and incorporates the details of SDG&E’s framework from the earlier decision. (D.04-12-015, p. 22.) D.04-12-015 notes that the approved SONGS costs are “based in principle on the text of D.04-07-022, and numerically rel[y] upon the SCE Results of Operation (RO) model for calculations of SONGS costs billed to participants by SCE.” (D.04-12-015, p. 23.) The decision does not criticize or dispute SDG&E’s framework, which is approved in the text of the D.04-07-022. Because there was not a modification of D.04-07-022, Public Utilities Code section 1708 is not applicable here, and SDG&E’s allegation is without merit.

⁴ Although SDG&E does not specifically argue that evidentiary hearing was required, it does cite *California Trucking Association v. Public Utilities Commission* (1977) 19 Cal.3d 240, 244 for the proposition that “a party must be permitted to prove the substance of its protest rather than merely being allowed to submit written objections to a proposal.” (Application for Rehearing, p. 15.) Thus, by inference, SDG&E appears to be arguing that the matter should have been addressed in evidentiary hearing. SDG&E’s reliance on this decision is misplaced. Because, as discussed below, Public Utilities Code section 1708 does not apply to the instant proceeding, and accordingly, the cited portion of *California Trucking Association*, interpreting section 1708, is not applicable here.

2. Evidentiary Record

SDG&E contends that the Commission's use of the SCE GRC RO model is not supported by evidence in the record.⁵ (Application for Rehearing, pp. 9 – 14.) In reviewing the record of the proceeding, we recognize that the record may be insufficient to support the SONGS calculation. D.04-12-015 relies on the RO model, which is Exhibit 409 in the SCE GRC, but is not in the record of the instant proceeding. Further, we note that the record on this issue lacks clarity. Thus, we agree that the record is not adequate.

We will, therefore, grant limited rehearing in order to revisit this issue. Limited rehearing will give the parties an opportunity to help clarify and develop an adequate evidentiary record on the calculation of the SONGS costs.

3. Findings of Fact

SDG&E contends that the Commission's use of the SCE GRC RO model is not supported by findings of fact. (Application for Rehearing, pp. 9 - 14.) Because we are granting a limited rehearing related to this issue, we need not address the D.04-12-015 findings of fact.

4. Decision 03-12-067 Memorandum Account

SDG&E requests that the Commission “make it clear in granting rehearing that it is approving a modification that will be effective as of January 1, 2004, pursuant to the memorandum account authorized by D.03-12-067.” (Application for Rehearing, p. 17.) SDG&E cites D.03-12-057 as support for its request, saying that the decision authorized a memorandum account to permit accurate determination of any revenue

⁵ SDG&E raises this evidentiary challenge in the context of Public Utilities Code section 1757. This statutory provision sets forth the standard of review for the courts in reviewing Commission's decisions. In any case, it is well established that Commission decisions must be supported by the evidentiary record. (See for example, *California Manufacturers Association v. Public Utilities Commission* (1979) 24 Cal.3d 251, 260-261.)

shortfall or over collection “when interim revenues are compared to final test year revenue requirement.” (Application for Rehearing, p. 17, citing D.03-12-057, p. 13 [Finding of Fact No. 5] (slip op.), emphasis added in original.) The granting of a limited rehearing does not affect the holdings in D.03-12-057 regarding the approval of memorandum account treatment effective January 1, 2004. Public Utilities Code section 1736 provides:

“If, after such rehearing and a consideration of all the facts, including those arising since the making of the order or decision, the [C]ommission is of the opinion that the original order or decision or any part thereof is in any respect unjust or unwarranted, or should be changed, the [C]ommission may abrogate, change, or modify it. The order or decision abrogating, changing, or modifying the original order or decision shall have the same force and effect as an original order or decision, but shall not affect any right or the enforcement of any right arising from or by virtue of the original order or decision unless so ordered by the commission.” (Pub. Util. Code, §1736.)

Accordingly, consistent with section 1736 above, if the decision on rehearing were to change the authorized revenue requirement for SONGS from that previously adopted in D.04-12-015, the revised amount would be recoverable through the memorandum account as authorized in D.03-12-057.

THEREFORE, IT IS ORDERED that:

1. Limited rehearing of D.04-12-015 is granted.
2. Rehearing is limited to the calculation of SDG&E’s share of SONGS costs, consistent with D.04-07-022, and to the development and clarification of the evidentiary record for the issues related to this calculation.
3. In all other respects, as discussed herein, the Application for Rehearing is hereby denied.

This order is effective today.

Dated May 5, 2005, at San Francisco, California.

MICHAEL R. PEEVEY
President
GEOFFREY F. BROWN
SUSAN P. KENNEDY
Commissioners

Commissioner John A. Bohn recused himself from this agenda item and was not part of the quorum in its consideration.

Commissioner Dian M. Grueneich recused herself from this agenda item and was not part of the quorum in its consideration.